

Gottwald v Sebert
2016 NY Slip Op 30198(U)
February 2, 2016
Supreme Court, New York County
Docket Number: 653118/2014
Judge: Shirley Werner Kornreich
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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
LUKASZ GOTTWALD p/k/a DR. LUKE, KASZ
MONEY, INC., and PRESCRIPTION SONGS, LLC,

Plaintiffs,

-against-

Index No. 653118/2014

KESHA ROSE SEBERT p/k/a KESHA, PEBE SEBERT,
VECTOR MANAGEMENT, LLC, and JACK ROVNER,

DECISION & ORDER

Defendants.

-----X
SHIRLEY WERNER KORNREICH, J.

Motion Sequences 005 and 006 are consolidated for disposition.

Defendants Vector Management, LLC (Vector), and its Vice-President, Jack Rovner (Rovner, collectively with Vector, Rovner Defendants) move (Motion Seq. 005), pursuant to CPLR 3211 (a)(1) and (5), to dismiss the fourth cause of action in the first amended complaint (FAC, Dkt 49)¹ for tortious interference with contracts. Plaintiffs oppose. The motion is granted for the reasons that follow.

Defendant Pebe Sebert (Pebe) moves (Motion Seq 006), pursuant to CPLR 3211 (a)(4) & (8) and CPLR 327, to dismiss the first and fourth causes of action in the FAC for, respectively, defamation and tortious interference with Kesha Rose Sebert's (Kesha's) contracts.² Plaintiffs oppose. The motion is granted for the reasons that follow.

I. Background

The facts unless otherwise noted are drawn from the FAC. Defendant Kesha is a

¹ References to "Dkt" followed by a number refer to documents filed in this action in the New York State Courts Electronic Filing System.

² The second and third causes of action are against Kesha for alleged breach of her contracts with KMI and Prescription.

recording artist and songwriter. Plaintiff Lukasz Gottwald, p/k/a, Dr. Luke (Gottwald) is a songwriter and producer of musical recordings. Kasz Money, Inc. (KMI) and Prescription Songs, LLC (Prescription, collectively with Gottwald and KMI, Plaintiffs) are, respectively, production and publishing companies owned by Gottwald. Gottwald is a California resident, KMI is a New York corporation, and Prescription is a California limited liability company. Vector is Kesha's manager. Rovner is a principal of Vector and one of its Vice-Presidents. Pebe is a songwriter who lives in Tennessee and is Kesha's mother.

In 2005, Kesha entered into an exclusive recording contract with KMI (KMI Agreement, Dkt 154) for six albums. The KMI Agreement was amended to reduce Kesha's obligation to five albums. The KMI Agreement provides that Gottwald would produce at least six recordings on each Kesha album and that Gottwald is entitled to a specified percentage of the sales of each such recording he produced. On November 26, 2008, Kesha entered into a separate Co-Publishing and Exclusive Administration Agreement with Prescription (Prescription Agreement, Dkt 155, with KMI Agreement, Gottwald Agreements). The FAC alleges that Kesha breached the Gottwald Agreements by failing to record more than two albums, remit royalties and other income to KMI, and deliver songs to Prescription.

The Gottwald Agreements were signed in New York, provide that they are governed by New York law, and contain forum selection clauses naming New York as the forum for resolving any controversies "regarding" them. The FAC alleges that Kesha was represented by experienced and sophisticated lawyers when she entered into the Gottwald Agreements. FAC, ¶¶24 & 31.

Pebe was not a party to or third-party beneficiary of the Gottwald Agreements.³

Nonetheless, Gottwald alleges that Pebe knew about the contracts and was heavily involved in Kesha's career.

On January 27, 2009, KMI entered into a separate agreement with RCA/Jive (RCA/Jive Agreement), in which KMI agreed to cause Kesha to produce recordings to be delivered to RCA/Jive. The same day, Kesha executed an Assent, Guaranty, and Entertainment Rights Agreement, in which she agreed to KMI's promises about her performance in the RCA/Jive Agreement.⁴ RCA/Jive is a wholly owned subsidiary of Sony Music Entertainment, a corporation with its principal place of business in New York.

On December 1, 2009, Pebe and Kesha entered into an agreement (Split Agreement, Dkt 156) to share Kesha's percentage from three songs they co-authored (Co-authored Songs), "on the same terms and conditions as were applicable to Kesha's applicable percentage, pursuant to the RCA/Jive Agreement as amended."⁵ The Split Agreement has New York forum selection and choice of law clauses and recites that Pebe entered into it in New York. Pebe also consented in the Split Agreement to personal jurisdiction in New York for any controversy regarding the Split Agreement. The Split Agreement refers to the RCA/Jive Agreement, but not the Gottwald Agreements. In the Split Agreement, Pebe granted RCA/Jive a license to use and promote Pebe's share of the Co-authored Songs.

The FAC alleges that after Gottwald made Kesha, a previously unknown artist, into a

³ Plaintiffs admitted at oral argument of the motions that Pebe is not a third-party beneficiary of the Gottwald Agreements. 6/2/16 Transcript, pp 62-63, Dkt 251.

⁴ Most of the Gottwald Agreements and RCA/Jive Agreements were heavily redacted by Plaintiffs.

⁵ No amendment of the RCA/Jive Agreement is in the record.

star, Pebe, Vector and Rovner (collectively, Movants) tortiously induced her to breach the Gottwald Agreements. Movants allegedly have “longstanding antipathy” toward Gottwald and told Kesha that she “could have greater artistic and financial success with another record label and publishing company.” Pebe allegedly is angry at Gottwald because only one of the Co-Authored Songs was made into a single and she believes she is entitled to a larger percentage of royalties than she has received. Rovner allegedly despises and refuses to speak to Gottwald because Rovner, former head of a record label, made suggestions regarding creative and business matters, which Gottwald rejected in front of third-parties. Rovner’s hatred of Plaintiffs allegedly is further fueled by their association with RCA Records (RCA), which marketed and released Kesha’s recordings, and Sony Music Entertainment, which owns RCA, with whom Rovner “previously had very bad professional and personal experiences.”

In addition, the FAC alleges that Movants were motivated by the fact that their income, based on percentages of Kesha’s business and publishing royalties, would be increased if Kesha entered into new recording and publishing agreements. During the recording of Kesha’s second album, *Animal*, Rovner allegedly instructed Kesha to refuse to show up for scheduled recording sessions, which cost KMI and Gottwald substantial amounts of money.

With respect to defamation by Pebe, the FAC alleges that she attempted to blackmail Gottwald by threatening to expose his alleged sexual and drug-related abuse of Kesha unless he let Kesha out of the Gottwald Agreements and gave Pebe back her “publishing”. Gottwald denies the allegations of sexual and drug-related abuse. When Gottwald denied Pebe’s requests in 2013, Pebe allegedly sent emails and letters to various people, including some in New York, which, Gottwald claims, falsely stated that he had date-raped, drugged and abused Kesha physically and mentally.

This action was commenced on October 14, 2014. Dkt 1. Two weeks later, Gottwald and KMI filed a complaint against Pebe for defamation and tortious interference with the KMI Agreement in a Tennessee federal court in Nashville (Federal Case). Dkt 82. The complaint in the Federal Case (Federal Complaint) alleges that its claims are the subject of this action. *Id.* The Federal Complaint says that it was filed as a precaution, in case Pebe successfully moved to dismiss the action filed here for lack of personal jurisdiction.

In her affidavit in support of this motion, Pebe avers that during the course of Kesha's recording agreement, Gottwald required Kesha to record and write her music with him in California. 1/14/15 Pebe Sebert Affidavit, Dkt 79. Plaintiffs submit no evidence that contradicts these facts.

Pebe's affidavit admits that she has a New York entertainment lawyer and publisher. It also states that she has never lived in New York, owns no real property in New York, maintains no New York mailbox, place of business, or bank accounts, and does not have a New York telephone number. She further avers that she normally does not come to New York for business and, for the most part, communicates with her New York lawyer and publisher using phone and/or email from Tennessee. She says she traveled to New York to meet with her former music publisher a handful of times and generally comes to New York to visit family for a "weekend or short duration." She claims that she writes music in California or Tennessee, but not New York, and does not distribute and has not sought to direct the distribution and sale of her music in New York.

II. *Discussion*

A. *Tortious Interference with Contract against Vector & Rovner*

The Rovner Defendant's motion is granted, and the fourth cause of action for tortious interference with the Gottwald Agreements, the only cause of action against them, is dismissed. It is well settled that an agent acting on behalf of its principal, within the scope of its authority, cannot be held liable for inducing its principal to breach a contract. *Devash LLC v German Am. Capital Corp.*, 104 AD3d 71, 79 (1st Dept 2013), *lv denied* 21 NY3d 863 (2013); *accord*, *KSK Constr. Group, LLC v 26 E. 64th St., LLC*, 126 AD3d 568, 569 (1st Dept 2015). Thus, where an agent acts within the scope of his authority, acts in good faith **and** does not commit independent torts or predatory acts, he cannot be held liable for inducing his principal's breach of contract. *Nu-Life Constr. Corp. v Board of Educ.*, 204 A.D.2d 106, 107 (1st Dept 1994); *see Greyhound Corp. v Commercial Casualty Ins. Co.*, 259 AD 317, 319 (1st Dept 1940) (agent acting in good faith within scope of his authority who procures breach of contract between his employer and third person can only be held liable if he commits independent tort); *Murtha v Yonkers Child Care Ass'n*, 45 NY2d 913, 915 (1978)(same holding). Moreover, it is a defense to interference with contractual relations that the defendant acted to protect his financial stake in the breaching party's business. *White Plains Coat & Apron Co., Inc. v Cintas Corp.*, 8 NY3d 422, 426 (2007). In fact, the Court in *White Plains Coat & Apron Co.* gave as an example a defendant who had a managerial contract with the breaching party. *Id.* at 426.

In this case, the tortious interference claim must be dismissed against the Rovner Defendants because they are alleged to have acted in the scope of their authority for the purpose of increasing Kesha's income (and, thereby, their own), and it is not alleged that they committed an independent tort. There is no allegation that the Rovner Defendants acted for the benefit of anyone but their principal, Kesha. The scope of their authority included maximizing Kesha's earnings. Therefore, it adds nothing to say that the Rovner Defendants were motivated by their

potential stake in more lucrative recording and publishing deals, when they advised her to breach the Gottwald Agreements. *See White Plains Coat & Apron, id.* Then too, the only tort alleged is interference with the Gottwald Contracts. Although Plaintiffs allege that Rovner hates and is jealous of Gottwald, that is not enough. The cases require a showing that the agent acted outside the scope of his authority, in bad faith, **and** committed an independent tort. Even assuming hatred and jealousy amount to bad faith, they are not torts.

B. Jurisdiction over Pebe & Forum Non Conveniens

Plaintiffs contend that this court has personal jurisdiction over Pebe based on the forum selection clauses in the Gottwald Agreements, the forum selection clause in the Split Agreement, CPLR 302 (a)(1), and CPLR 302(a)(3). The court disagrees.

KMI & Prescription Forum Selection Clauses

Plaintiffs rely on the forum selection clauses in the Gottwald Agreements as a basis for exercising personal jurisdiction over Pebe. However, Pebe neither signed nor is mentioned in the Gottwald Agreements.

The KMI Agreement forum selection clause provides:

The New York courts (state and federal), shall have sole jurisdiction of any controversies regarding this agreement; any action or other proceeding which involves such a controversy shall be brought in those courts in New York County and not elsewhere. The parties waive any and all objections to venue in those courts and hereby submit to the jurisdiction of those courts.

The Prescription Agreement contains the following forum selection clause:

The state courts of the State of New York, County of New York and/or the Federal District Courts for the Southern District of New York, shall have jurisdiction and venue of any controversies regarding this agreement. Any action or proceeding which involves such a controversy will be brought in the enumerated courts, and not elsewhere. In addition to accepting such

jurisdiction, each party hereby waives any objection based upon forum non conveniens or any similar ground.

The general rule in New York is that only parties in privity of contract may enforce a forum selection clause or have it enforced against them. *Freeford Ltd. v Pendleton*, 53 AD3d 32, 38 (1st Dept. 2008).⁶ The First Department has articulated three exceptions to this general rule:

...[T]here are three sets of circumstances under which a nonparty may invoke a forum selection clause: First, it is well settled that an entity or individual that is a third-party beneficiary of the agreement may enforce a forum selection clause found within the agreement. Second, parties to a "global transaction" who are not signatories to a specific agreement within that transaction may nonetheless benefit from a forum selection clause contained in such agreement if the agreements are executed at the same time, by the same parties or for the same purpose. Third, a nonparty that is "closely related" to one of the signatories can enforce a forum selection clause. The relationship between the nonparty and the signatory in such cases must be sufficiently close so that enforcement of the clause is foreseeable by virtue of the relationship between them.

Id., 38-39 (internal citations omitted). Plaintiffs rely on the close relationship exception.

In *Tate & Lyle Ingredients Americas, Inc. v Whitefox Technologies USA, Inc.*, 98 AD3d 401 (1st Dept 2012), the First Department addressed the close relationship exception. It held that a parent corporation that did not sign the contract of its subsidiary was bound by the forum

⁶ *Freeford* involved the global transaction exception. The Court enforced a forum selection clause against a limited liability company (LLC), and the individual who controlled the LLC and signed a stock purchase agreement (Cairnwood Management and Lane Pendelton). The stock purchase agreement was held to be part of a global transaction that contained a shareholders agreement, which Cairnwood Management and Lane Pendelton did not sign, but which contained the forum selection clause. The court reasoned that the two agreements were executed on the same day and for the same purpose, to obtain financing for the same entity, and it was foreseeable that a party to the shareholders agreement would enforce the forum selection clause against Cairnwood Management and Lane Pendelton. However, the court denied enforcement against Lane Pendelton's sons and their entities because they were not signatories to, and did not control, any part of the global transaction.

selection clause and denied the parent's motion to dismiss the defendants' counterclaims for lack of personal jurisdiction. In ruling that the parent was bound by the forum selection clause, the court focused on the parent's control of the subsidiary, including that the subsidiary needed the parent's approval to enter into the contract with the forum selection clause; the parent made the decision for the subsidiary to bring the main action; and the parent controlled the subsidiary's performance under the contract. *See also, Dogmoch Int'l Corp. v Dresdner Bank AG*, 304 AD2d 396 (1st Dept 2003) (control by parent over subsidiary); *Shah v Ortiz*, 2012 NY Slip Op 33361 (U); 2012 NY Misc. LEXIS 6346 (nor) (joint venturer LLC bound by forum selection clause in contract between its sole owners and joint venture).

In this case, the exceptions do not apply, and the forum selection clauses in the Gottwald Agreements do not bind Pebe. Plaintiffs admit that Pebe is not a third-party beneficiary of the Gottwald Agreements. Nor do they argue that the Split Agreement was part of a global agreement that included the Gottwald Agreements.⁷

Instead, they argue the closely related exception. However, Plaintiffs present no evidence that Pebe controlled Kesha when she entered into the Gottwald Agreements. Plaintiffs contend that Pebe is closely related because she is Kesha's mother and song-writing partner, and is involved in her career. Clearly, being a parent of an adult is not enough to establish control. Plaintiffs admit in the FAC that Kesha was represented by sophisticated and experienced entertainment lawyers when she signed the Gottwald Agreements, which contradicts control of the contracting decision by Pebe. Further, Plaintiffs allege that the motive for Pebe's

⁷ The Gottwald Agreements were effective September 26, 2005 and November 26, 2008. FAC, ¶24 & 31. They bound Kesha to record albums and grant publishing rights. The Split Agreement, dated December 1, 2009, was for the purpose of dividing Kesha's percentage of publishing revenue, pursuant to the RCA/Jive Agreement. Dkt 156. KMI is mentioned solely as RCA/Jive's counterparty in the RCA/Jive Agreement. *Id.*

interference with the Gottwald Agreements is self-interest – Pebe’s belief that if Kesha had a new recording agreement, Pebe would have more control over the songwriting process and more Co-authored Songs would be selected as singles.⁸ FAC, ¶51. Again, these facts negate Pebe’s control over Kesha’s career and do not make it foreseeable to Pebe that she would be bound by the forum selection clauses in *Kesha’s* agreements.

Split Agreement Forum Selection Clause

The Split Agreement forum selection clause states:

The courts of New York, New York (state and federal) will have jurisdiction of any controversies regarding this agreement and the parties hereto consent to the jurisdiction of such courts.

The claims against Pebe, defamation and interference with the Gottwald Agreements, do not fall within the Split Agreement’s forum selection clause. The alleged torts are not “controversies regarding” the Split Agreement. The controversies involve the Gottwald Agreements and the tort of defamation.

Long-Arm Jurisdiction Over Pebe

To determine whether a non-domiciliary is subject to personal jurisdiction under New York law, the court first must determine whether New York’s long arm statute is satisfied, and then whether the exercise of jurisdiction comports with due process. *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 (2000). The plaintiff bears the burden of establishing the fact of jurisdiction. *Derso v Volkswagen of America, Inc.*, 159 AD2d 937, 938 (4th Dept 1990).

⁸ Plaintiffs other arguments that Pebe is united in interest -- that she made the same false accusations about Gottwald’s abuse of Kesha in the Tennessee action; that she and Kesha raised the same arguments; that she knew of the Gottwald Agreements; and that her rights are derivative of Kesha’s – are meritless. None of these factors show Pebe controlled Kesha when she entered into the Gottwald Agreements and could have foreseen being bound by the forum selection clauses.

CPLR 302, New York's long arm jurisdiction statute provides, in pertinent part, as follows:

(a) Acts which are the basis of jurisdiction.

As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary ..., who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or ...

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce

Transaction of Business – 302(a)(1)

CPLR 302(a)(1), which governs personal jurisdiction based upon the transaction of business in the state, is a single act statute. *Wilson v Dantas*, 128 AD3d 176, 181 (1st Dept 2015). Proof of one transaction in New York is sufficient to invoke jurisdiction so long as the defendant's activities in New York were purposeful and there is a substantial relationship between the transaction and the claim asserted. *Id.* In construing CPLR 302 (a) (1), courts look at the totality of the defendant's activities to determine if he was "engaged in some purposeful activity in this State in connection with the matter in suit." *Longines-Wittnauer Watch Co. v Barnes & Reinecke, Inc.*, 15 NY2d 443, 457 & n 5, *cert denied sub nom. Estwing Mfg. Co. v Singer*, 382 US 905 (1965). "Purposeful activities are those with which a defendant, through volitional acts, 'avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" [citations omitted] *Fischbarg v Doucet*, 9

NY2d 375, 380 (2007). "[J]urisdiction is not justified where the relationship between the claim and the transaction is too attenuated" or "merely coincidental." *Johnson v Ward*, 4 NY3d 516, 520 (2005).

Plaintiffs argue that there is jurisdiction over Pebe because their claims against her arise from her transaction of business in New York. However, the cases on which plaintiffs rely demonstrate that this court cannot exercise personal jurisdiction over Pebe because her business activities in New York did not have a sufficient nexus to the instant claims for defamation and tortious interference with the Gottwald Agreements. In *Legros v Irving*, 38 AD2d 53, 55-56 (1st Dept 1971), the plaintiff alleged that statements made in a book defamed him and "virtually all the work attendant upon publication of the book occurred in New York." *Id.* There, the defendant researched the book, negotiated with the publisher, and signed the publishing contract in New York. The book then was printed in New York.

In *GTP Leisure Products, Inc. v B-W Footwear Co.*, 55 AD2d 1009, 1010 (4th Dept 1977), the plaintiff purchased merchandise from the defendant in New York. The defendant was a Massachusetts corporation. Subsequently, the defendant, whose agreement with the manufacturer prohibited the sale to plaintiff, told the manufacturer, a Minnesota corporation, that it had reneged on the sale to the plaintiff because it was a "credit risk". The plaintiff also was one of the manufacturer's distributors and sued for defamation. Jurisdiction over the defendant was upheld on the basis that its transaction with the plaintiff in New York was the subject of the defamatory statement. Similarly, to obtain personal jurisdiction for tortious interference with contract based upon transacting business in New York, there must be a nexus between the defendant's New York business activities and the claim asserted. *OR.EN. Orobia Eng'g S.R.L. v Nacht*, 1998 U.S. Dist. LEXIS 16319 (S.D.NY Oct. 16, 1998).

Personal jurisdiction for defamation and tortious interference with contract claims cannot be based on Pebe's transaction of business in New York. The alleged defamation was not about Pebe's business activities in New York and did not arise from the Split Agreement or Pebe's employment of a New York lawyer and publisher. Likewise, the interference with contract claim is based on Pebe's interference with the Gottwald Agreements, not the Split Agreement or Pebe's employment of New York professionals. At most, the alleged torts were *motivated* by Pebe's desire to earn more money from the Split Agreement, but it cannot be said that they arose from it. Instead, Plaintiffs' claims against Pebe arise from alleged torts she committed to undermine the Gottwald Contracts, not from Pebe's own business activities in New York. The connection with the Split Agreement and Pebe's other New York business dealings is too attenuated. *Johnson*, 4 NY3d 516, *supra*.

*Committing Tortious Act without the State that Causes Injury in New York -
302(a)(3)*

Jurisdiction under CPLR 302(a)(3) rests on five elements:

- (1) the defendant committed a tortious act outside the State;
- (2) the cause of action arises from that act;
- (3) the act caused injury to a person or property within the State;
- (4) the defendant expected or should reasonably have expected the act to have consequences in the State; and
- (5) the defendant derived substantial revenue from interstate or international commerce.

LaMarca v Pak-Mor Mfg. Co., 95 NY2d 210, 214 (2000). CPLR 302(a)(3) excludes a cause of action for defamation.

The situs of an economic injury for long-arm purposes is where the event giving rise to the injury occurred, not where the resultant damages were suffered. *Marie v Altshuler*, 30 AD3d 271, 272 (1st Dept 2006); *Polansky v Gelrod*, 20 AD3d 663, 665 (3d Dept 2005) (situs of

nonphysical commercial injury is place where critical events associated with dispute took place and not where resultant monetary loss occurred).

In their memorandum of law, which is not evidence, Plaintiffs contend that the inability of KMI and Prescription to perform their contracts with Sony for the delivery of recordings and songs in New York was the situs of the tort. Plaintiffs' 2/4/15 Memorandum of Law, Dkt 152, p 19. While Plaintiffs may have been damaged by being forced to breach their Sony contracts, the place where an economic injury is suffered, as noted earlier, is not the situs of the injury for an economic tort. *Marie, supra, & Polansky, supra*. Further, Prescription is a California entity.

The critical event here was Pebe's alleged interference with Kesha's performance under her contracts with KMI and Prescription, i.e., where Pebe allegedly advised or cajoled Kesha to breach them and where Kesha breached them. By relying on §302(a)(3), Plaintiffs by definition place Pebe's conduct outside of New York because subsection (a)(3) only applies to a tortious act committed outside the State that causes injury in New York. Because Plaintiffs offered no evidence contradicting Pebe's sworn statement that Gottwald required all of Kesha's recording and song-writing sessions to take place in California, Kesha's failure to perform the Gottwald Agreements took place in California. Hence, Plaintiffs failed to meet their burden of proof that the situs of their injury was in New York. *See Derso v Volkswagen of America, Inc., supra*.

In sum, there is no statutory long-arm jurisdiction for defamation, and Plaintiffs did not sustain their burden of proving that the tortious interference injury occurred in New York. The court need not consider due process, as there is no long-arm jurisdiction over Pebe.

Jurisdictional Discovery

Jurisdictional discovery is sought by Plaintiffs to explore whether Pebe has more business contacts with New York. However, as Plaintiffs' claims for defamation and tortious interference

with the Gottwald Agreements do not have a substantial relationship with Pebe's transaction of business in New York, the requested discovery is not warranted. *See, Wilson; Longines-Wittnauer Watch Co.; Fischbarg; & Johnson, supra.*

Forum Non Conveniens

New York's *forum non conveniens* statute, CPLR 327(a), provides that "[w]hen the court finds that in the interest of substantial justice the action should be heard in another forum, the court ... may stay or dismiss the action in whole or in part on any conditions that may be just." A court may stay or dismiss an action where it determines that the action, although jurisdictionally sound, would be better adjudicated elsewhere. *Century Indem. Co. v Liberty Mut. Ins. Co.*, 107 AD3d 421, 423 (1st Dept 2013), citing *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-479 (1984). The doctrine rests on considerations of fairness, justice and convenience. *Id.*, 79.

Even if there were jurisdiction over Pebe for tortious interference with contract, the court would dismiss based upon forum non conveniens. The defamation claim could not be brought against her because it is excluded from the jurisdictional reach of CPLR 302(a)(3). Thus, Pebe would have to defend on two fronts. That would be financially burdensome. According to the FAC, Pebe is a "frustrated songwriter who had a smattering of success decades ago." FAC, ¶51. Plaintiffs have a pending action in Tennessee. It would not be fair to force Pebe to litigate in two separate courts. Moreover, there is no chance of inconsistent verdicts. Separate acts of defamation are alleged to have been made by Kesha and Pebe.⁹ The interference with contract claim is only against Pebe. Justice, fairness and convenience militate in favor of dismissal.

⁹ Kesha's alleged defamatory statements were made in 2014 letters to her fans and a 2014 draft complaint given to the attorney for major record label with whom Gottwald does business. FAC, ¶¶ 62 & 63. Pebe's alleged defamation consists of 2013 emails to Gottwald's entertainment lawyer and various recipients, as well statements made to representatives of Pebe's publisher, Sony/ATV Music Publishing. FAC, ¶¶ 57-59.

Accordingly, it is

ORDERED that the motions by Vector Management, LLC, and Jack Rovner (Motion Sequence 005), and Pebe Sebert (Motion Sequence 006), to dismiss the first amended complaint as against them are granted, and, upon service upon him of a copy of this order with notice of entry, the Clerk is directed to enter judgment accordingly, and to sever the remainder of the action, which shall continue; and it is further

ORDERED that the caption of the action is hereby amended as follows:

LUKASZ GOTTWALD p/k/a DR. LUKE, KASZ
MONEY, INC., and PRESCRIPTION SONGS, LLC,

Plaintiffs,

-against-

KESHA ROSE SEBERT p/k/a KESHA,

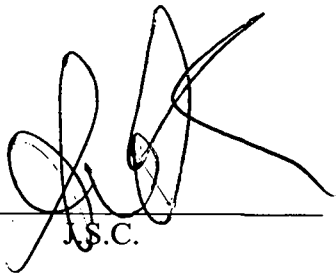
Defendant.

and all papers henceforth filed in this action shall bear the amended caption; and it is further

ORDERED that upon service upon the Clerks of the Court and the Trial Support Office of a copy of this order with notice of entry, they shall amend their records to reflect the amended caption and the severance ordered herein.

Dated: February 2, 2016

ENTER:



J.S.C.
SHIRLEY WERNER KORNREICH
J.S.C.